

FIRST REGULAR SESSION

SENATE BILL NO. 346

95TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR SCHAEFER.

Read 1st time February 10, 2009, and ordered printed.

TERRY L. SPIELER, Secretary.

1332S.02I

AN ACT

To repeal sections 407.925, 407.928, 407.929, and 407.931, RSMo, and to enact in lieu thereof four new sections relating to sale of tobacco products, with penalty provisions.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Sections 407.925, 407.928, 407.929, and 407.931, RSMo, are
2 repealed and four new sections enacted in lieu thereof, to be known as sections
3 407.925, 407.928, 407.929, and 407.931, to read as follows:

407.925. As used in sections 407.925 to 407.932, the following terms
2 mean:

3 (1) "Center of youth activities", any playground, school or other facility,
4 when such facility is being used primarily by persons under the age of eighteen
5 for recreational, educational or other purposes;

6 (2) "Distribute", a conveyance to the public by sale, barter, gift or sample;

7 (3) "Minor", a person under the age of eighteen;

8 (4) "Municipality", the city, village or town within which tobacco products
9 are sold or distributed or, in the case of tobacco products that are not sold or
10 distributed within a city, village or town, the county in which they are sold or
11 distributed;

12 (5) "Person", an individual, partnership, copartnership, firm, company,
13 public or private corporation, association, joint stock company, trust, estate,
14 political subdivision or any agency, board, department or bureau of the state or
15 federal government, or any other legal entity which is recognized by law as the
16 subject of rights and duties;

17 (6) "Proof of age", a driver's license or other generally accepted means of

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

18 identification that contains a picture of the individual and appears on its face to
19 be valid;

20 (7) "Rolling papers", paper designed, manufactured, marketed, or sold for
21 use primarily as a wrapping or enclosure for tobacco, which enables a person to
22 roll loose tobacco into a smokable cigarette;

23 (8) "Sample", a tobacco product distributed to members of the general
24 public at no cost or at nominal cost for product promotional purposes;

25 (9) "Sampling", the distribution to members of the general public of
26 tobacco product samples;

27 (10) **"Self-service display", a display that contains tobacco**
28 **products and is located in an area openly accessible to consumers and**
29 **from which such consumers can readily access tobacco products**
30 **without the assistance of the sales clerk or store attendant; except that**
31 **a display that holds tobacco products behind locked doors shall not**
32 **constitute a self-service display;**

33 (11) "Tobacco products", any substance containing tobacco leaf, including,
34 but not limited to, cigarettes, cigars, pipe tobacco, snuff, chewing tobacco, or
35 dipping tobacco;

36 (12) **"Tobacco specialty store", an establishment that derives at**
37 **least thirty-three percent of its revenue from tobacco**
38 **products. "Tobacco specialty store" shall not include a grocery store or**
39 **a convenience business as defined in section 407.980;**

40 [(11)] (13) "Vending machine", any mechanical electric or electronic,
41 self-service device which, upon insertion of money, tokens or any other form of
42 payment, dispenses tobacco products.

407.928. No person or entity shall sell individual packs of cigarettes or
2 smokeless tobacco products unless such packs satisfy one of the following
3 conditions prior to the time of sale:

4 (1) It is sold through a vending machine; [or]

5 (2) It is displayed behind the check-out counter [or it is within the
6 unobstructed line of sight of the sales clerk or store attendant from the checkout
7 counter]; or

8 (3) **It is sold through a self-service display that is located in a**
9 **tobacco specialty store.**

407.929. 1. A person or entity selling tobacco products or rolling papers
2 or distributing tobacco product samples shall require proof of age from a

3 prospective purchaser or recipient if an ordinary person would conclude on the
4 basis of appearance that such prospective purchaser or recipient may be under
5 the age of eighteen.

6 2. The operator's or chauffeur's license issued pursuant to the provisions
7 of section 302.177, RSMo, or the operator's or chauffeur's license issued pursuant
8 to the laws of any state or possession of the United States to residents of those
9 states or possessions, or an identification card as provided for in section 302.181,
10 RSMo, or the identification card issued by any uniformed service of the United
11 States, or a valid passport shall be presented by the holder thereof upon request
12 of any agent of the division of liquor control or any owner or employee of an
13 establishment that sells tobacco, for the purpose of aiding the registrant, agent
14 or employee to determine whether or not the person is at least eighteen years of
15 age when such person desires to purchase or possess tobacco products procured
16 from a registrant. Upon such presentation, the owner or employee of the
17 establishment shall compare the photograph and physical characteristics noted
18 on the license, identification card or passport with the physical characteristics of
19 the person presenting the license, identification card or passport.

20 3. Any person who shall, without authorization from the department of
21 revenue, reproduce, alter, modify or misrepresent any chauffeur's license, motor
22 vehicle operator's license or identification card shall be deemed guilty of a
23 misdemeanor and upon conviction shall be subject to a fine of not more than one
24 thousand dollars, and confinement for not more than one year, or by both such
25 fine and imprisonment.

26 4. Reasonable reliance on proof of age or on the appearance of the
27 purchaser or recipient shall be a defense to any action for a violation of
28 subsections 1, 2, and [3] 4 of section 407.931. No person shall be liable for more
29 than one violation of subsections 2 [and], 3, and 4 of section 407.931 on any
30 single day.

407.931. 1. It shall be unlawful for any person to sell, provide or
2 distribute tobacco products to persons under eighteen years of age.

3 2. By January 1, 2002, all vending machines that dispense tobacco
4 products shall be located within the unobstructed line of sight and under the
5 direct supervision of an adult responsible for preventing persons less than
6 eighteen years of age from purchasing any tobacco product from such machine or
7 shall be equipped with a lock-out device to prevent the machines from being
8 operated until the person responsible for monitoring sales from the machines

9 disables the lock. Such locking device shall be of a design that prevents it from
10 being left in an unlocked condition and which will allow only a single sale when
11 activated. A locking device shall not be required on machines that are located in
12 areas where persons less than eighteen years of age are not permitted or
13 prohibited by law. An owner of an establishment whose vending machine is not
14 in compliance with the provisions of this subsection shall be subject to the
15 penalties contained in subsection [5] 6 of this section. A determination of
16 noncompliance may be made by a local law enforcement agency or the division of
17 liquor control. Nothing in this section shall apply to a vending machine if located
18 in a factory, private club or other location not generally accessible to the general
19 public.

20 **3. By January 1, 2010, all self-service displays that dispense**
21 **tobacco products shall be located in tobacco specialty stores. An owner**
22 **of an establishment whose self-service display is not in compliance with**
23 **the provisions of this subsection shall be subject to the penalties**
24 **contained in subsection 6 of this section. A determination of**
25 **noncompliance may be made by a local law enforcement agency or the**
26 **division of alcohol and tobacco control. Nothing in this subsection**
27 **shall apply to a vending machine permitted under subsection 2 of this**
28 **section.**

29 **4.** No person or entity shall sell, provide or distribute any tobacco product
30 or rolling papers to any minor, or sell any individual cigarettes to any person in
31 this state. This subsection shall not apply to the distribution by family members
32 on property that is not open to the public.

33 **[4.] 5.** Any person including, but not limited to, a sales clerk, owner or
34 operator who violates subsection 1, 2 [or], 3, or 4 of this section or section
35 407.927 shall be penalized as follows:

- 36 (1) For the first offense, twenty-five dollars;
- 37 (2) For the second offense, one hundred dollars;
- 38 (3) For a third and subsequent offense, two hundred fifty dollars.

39 **[5.] 6.** Any owner of the establishment where tobacco products are
40 available for sale who violates subsection 3 or 4 of this section, in addition to the
41 penalties established in subsection [4] 5 of this section, shall be penalized in the
42 following manner:

- 43 (1) For the first violation per location within two years, a reprimand shall
44 be issued by the division of liquor control;

45 (2) For the second violation per location within two years, the division of
46 liquor control shall issue a citation prohibiting the outlet from selling tobacco
47 products for a twenty-four-hour period;

48 (3) For the third violation per location within two years, the division of
49 liquor control shall issue a citation prohibiting the outlet from selling tobacco
50 products for a forty-eight-hour period;

51 (4) For the fourth and any subsequent violations per location within two
52 years, the division of liquor control shall issue a citation prohibiting the outlet
53 from selling tobacco products for a five-day period.

54 [6.] 7. Any owner of the establishment where tobacco products are
55 available for sale who violates subsection 3 or 4 of this section shall not be
56 penalized pursuant to this section if such person documents the following:

57 (1) An in-house or other tobacco compliance employee training program
58 was in place to provide the employee with information on the state and federal
59 regulations regarding tobacco sales to minors. Such training program must be
60 attended by all employees who sell tobacco products to the general public;

61 (2) A signed statement by the employee stating that the employee has
62 been trained and understands the state laws and federal regulations regarding
63 the sale of tobacco to minors; and

64 (3) Such in-house or other tobacco compliance training meets the
65 minimum training criteria, which shall not exceed a total of ninety minutes in
66 length, established by the division of liquor control.

67 [7.] 8. The exemption in subsection [6.] 7 of this section shall not apply
68 to any person who is considered the general owner or operator of the outlet where
69 tobacco products are available for sale if:

70 (1) Four or more violations per location of subsection 3 or 4 of this section
71 occur within a one-year period; or

72 (2) Such person knowingly violates or knowingly allows his or her
73 employees to violate subsection 3 or 4 of this section.

74 [8.] 9. If a sale is made by an employee of the owner of an establishment
75 in violation of sections 407.925 to 407.934, the employee shall be guilty of an
76 offense established in subsections 1, 2 [and], 3, and 4 of this section. If a
77 vending machine is in violation of section 407.927, the owner of the establishment
78 shall be guilty of an offense established in subsections [3 and] 4 and 5 of this
79 section. If a sample is distributed by an employee of a company conducting the
80 sampling, such employee shall be guilty of an offense established in subsections

81 [3 and] 4 **and 5** of this section.

82 [9.] **10.** A person cited for selling, providing or distributing any tobacco
83 product to any individual less than eighteen years of age in violation of
84 subsection 1, 2 [or], 3, **or 4** of this section shall conclusively be presumed to have
85 reasonably relied on proof of age of the purchaser or recipient, and such person
86 shall not be found guilty of such violation if such person raises and proves as an
87 affirmative defense that such individual presented a driver's license or other
88 government-issued photo identification purporting to establish that such
89 individual was eighteen years of age or older.

90 [10.] **11.** Any person adversely affected by this section may file an appeal
91 with the administrative hearing commission which shall be adjudicated pursuant
92 to the procedures established in chapter 621, RSMo.

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Bill

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